

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

DAMIEN J. MORGAN

Plaintiff

v.

**Case No. 2:23-cv-02744
JURY DEMANDED**

MEMPHIS LIGHT, GAS, & WATER,

Defendant.

**DEFENDANT'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DISCOVERY RESPONSES**

Defendant Memphis Light, Gas, & Water (hereinafter, "MLGW" and/or "Defendant") respectfully submits this Supplemental Response in Opposition to Plaintiff's Motion to Compel Discovery Responses, and moves this Court for an Order refusing to impose attorneys' fees based on the Order Granting Plaintiff's Motion. Defendant contends that the imposition of fees would be unjust based on the responsibilities of its counsel to her family and as Plaintiff has proposed an alternate remedy. In further support of this Supplemental Response, Defendant states as follows:

I. Argument

First, while Rule 37(a)(5)(A) states a Court "must" require fees to be paid by the party whose conduct necessitated a motion under the rule, it also notes that the Court "must *not*" order such payment if there are other circumstances that would make an award unjust. Fed.R.Civ.P. 37(a)(5)(A), (iii), *emphasis added*. Defendant contends such other circumstances as referenced in the rule are present in this instance.

The undersigned Counsel for Defendant contends her time and attention were split between duties as an attorney and responsibility to support and care for a parent diagnosed with a distressing

and serious illness requiring surgery and multiple appointments at the West Clinic, and that it would be unjust to punish Defendant on this basis. The delay in submitting discovery responses was not caused by Defendant's willful refusal to supply documents or information, a deliberate effort to frustrate discovery generally, or an insufficient respect for Plaintiff, his Counsel, or this Court. Defendant has not failed to abide by an order of this Court, engaged in contumacious conduct in discovery or litigation, or otherwise demonstrated objectionable behavior. Rather, the delay in submitting responses, documents, and communications to Plaintiff's Counsel was caused by its Counsel's competing commitment to her family and the resulting mental impact.

Second, Plaintiff's Counsel suggested an alternate form of relief at the Hearing on Plaintiff's Motion held virtually on February 18, 2025, specifically an extension of the expert disclosure deadlines for both Plaintiff and Defendant. The Parties are distinctly aware that they have jointly imposed on the Court's schedule at various points in this litigation in seeking extensions to the deadlines set in this matter, and that it is within the Court's broad discretion to grant or deny such relief in appropriate circumstances.

II. Conclusion

As set out herein, the imposition of fees against Defendant as listed in Plaintiff's Counsel's affidavits would be unjust, based on the circumstances of its undersigned Counsel, and the suggested alternate form of relief as proposed by Plaintiff, as is within the Court's wide discretion to grant in crafting remedies generally and in discovery specifically. On these bases, an award of fees against Defendant would be unjust, per the language set out in Rule 37(a)(5)(A)(iii).

Dated: March 18, 2025

Respectfully submitted,

s/ Amanda M. Garland

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CERTIFICATE OF SERVICE

I certify that on the 18th day of March 2025, the foregoing has been served via the Court's ECF filing system to the following counsel of record:

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Attorneys for Plaintiff

s/ Amanda M. Garland

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